

1 Q Did you, in fact, find chemicals that were later  
2 taken to the lab and tested?

3 A Yes, sir.

4 Q And did they contain methamphetamine?

5 A Yes.

6 MS. FARRAR: Objection, relevance.

7 THE COURT: Well, since that's the matter  
8 that's subject to being suppressed, I'll overrule  
9 the objection.

10 Q In fact, there were approximately 2000 grams of  
11 mixtures containing methamphetamine; is that  
12 right?

13 A Yes, sir. That was the report I got.

14 Q Did you see other or were other precursor  
15 chemicals seized?

16 A Yes, sir.

17 Q Let me ask you, in your presence, did Mr. Whitley  
18 make any statements?

19 A Yes, sir.

20 MS. FARRAR: Objection.

21 THE COURT: Overruled.

22 Q Prior to making that statement, had he been asked  
23 any questions?

24 A No, sir.

25 Q And was this information volunteered, not in

1 response to a question by you or any other  
2 officer?

3 A No, sir.

4 MS. FARRAR: Objection, leading.

5 MR. LANDREAU: Okay.

6 Q Prior to him making these statements, had you or  
7 any other officer asked him any questions?

8 A No, sir.

9 Q What statements did he make?

10 A He had made one statement that his life was over  
11 and this stuff has ruined his life; something to  
12 that effect.

13 Q Okay.

14 A And also he made one statement that he didn't  
15 mean to -- he didn't mean it by to blow it up.  
16 He meant for them to pour it down the sink.

17 Q Well, did you hear him use the words blow it up?

18 A Yes, sir.

19 Q Didn't use the words pour it down the sink?

20 A Yes, sir. No, sir, he never said that.

21 Q Officer, at the time you entered the trailer,  
22 were you concerned about the safety of you and  
23 your fellow police officers?

24 A Yes, sir, I was.

25 Q Were you concerned about the safety of neighbors

1 and residents of that trailer park?

2 A Yes, sir, I was.

3 Q And what was your concern specifically about it?

4 A The hazardous waste, the explosion, the fire. A  
5 number of hazards.

6 MS. FARRAR: Objection on the grounds that  
7 there was no -- that was just an opinion.

8 THE COURT: Objection overruled.

9 MR. LANDREAU: Ms. Farrar may have some  
10 questions for you.

11 CROSS-EXAMINATION

12 BY MS. FARRAR:

13 Q Hey. When you stated just now that Jerry Whitley  
14 offered a statement or several statements which  
15 were not in response to anything that y'all said,  
16 didn't you really say at one point to Mr. Whitley  
17 I thought you was going to blow it up?

18 A No, ma'am.

19 Q Did you say anything to Mr. Whitley?

20 A No, ma'am. I believe he was making these  
21 statements to Sergeant Price.

22 Q So no statements were directed to you that you  
23 recall?

24 A Not that I recall.

25 Q Do you remember Sergeant Price saying anything to

1           Mr. Whitley?

2   A   No, sir.

3   Q   Isn't it true when you went in the trailer that  
4       the string was not attached to anything in the  
5       ceiling?

6   A   No, that's not true.

7   Q   So if you said that in the preliminary hearing --

8   A   No. What I'm saying is true. What you're saying  
9       is wrong.

10   Q   So in the preliminary hearing, if you stated to  
11      the Court that the string was not attached to the  
12      ceiling, then you would have been --

13   A   They were attached to eye hooks in the ceiling.

14   Q   But if you said that the string was on the floor,  
15      you would have just not remembered?

16   A   No, sir. No, ma'am.

17   Q   No, ma'am, you wouldn't have remembered?

18   A   I don't know what you're saying, really.

19   Q   Do you remember that you testified at the  
20      preliminary hearing that the string was actually  
21      on the floor?

22   A   No, ma'am. I don't remember testifying to that.

23   Q   Did you personally go to Judge Funderburk to get  
24      him to sign the search warrant?

25   A   Yes, ma'am.

## VOLUME 4

COURT OF CRIMINAL APPEALS NO. CR-02-0739**Appeal To Alabama Court of Criminal Appeals**

FROM

**Circuit Court of Russell County, Alabama****CIRCUIT COURT NO** CC-02-186-188**CIRCUIT JUDG** HONORABLE GEORGE R. GREENE**Type of Conviction/ Order Appealed From:** TRAFFICKING METH , POSS OF REC CONT SUBS, RESISTING ARREST**Sentence Imposed:** 35 YRS CONCUR, 5 YRS CONCUR, 6 MTHS CONSEC**Defendant Indigent:**  YES  NOJERRY E. WHITLEY**Name of Appellant**ATTY MICHAEL J WILLIAMS SR (205)-705-0200(Appellant's Attorney) (Telephone No.)P.O. BOX 1068(Address)AUBURN, AL 36831(City) (State)(Zip Code)**V.**STATE OF ALABAMA**Name of Appellee**

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter  
name and address of municipal attorney below.

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(For Court of Criminal Appeals Use Only)

1 Q Where did you have to go?

2 A To his residence.

3 Q What time of day was it, if you remember?

4 A It was sometime after 3:00. The time should be  
5 on the search warrant. I don't recall the exact  
6 time.

7 Q Would it have been 8:00?

8 A It could have been.

9 Q Would there be any reason that you know of why a  
10 three was changed to eight in the time part of  
11 the search warrant?

12 A I'm not aware of that.

13 Q When you first said that Caylene White answered  
14 the door, did she come to the door and just speak  
15 through the inner door?

16 A No, ma'am. She was face-to-face with us.

17 Q So she actually propped open the door?

18 A Yes. Yes, ma'am. The door was open.

19 Q What do you mean the door was open?

20 A It wasn't closed.

21 Q It never was closed when you got there?

22 A No, ma'am. Sergeant Price knocked on the door  
23 and she opened the door.

24 Q Did she open it inside ways or outside ways?

25 A I don't recall. I believe it's inside. Most

1           trailers are, but I don't recall on that one.

2   Q       How did you know that there was a surveillance  
3           camera in the window that you testified that  
4           Moseson looked at?

5   A       I saw it.

6   Q       Did you see a red light?

7   A       No, ma'am.

8   Q       So it wasn't actually a camera that was  
9           camouflaged?

10   A       No, ma'am.

11   Q       Is that your testimony?

12   A       No, ma'am.

13   Q       Was there any evidence before you actually  
14           stopped Moseson or saw Moseson that anyone was  
15           violating the law at the residence?

16   A       No, ma'am.

17   Q       When you saw Moseson come out of the house and  
18           you were on the street, did you have any reason  
19           to believe that he was violating the law?

20   A       No, ma'am.

21   Q       When you approached him, did you tell him that he  
22           was free to leave?

23   A       No, ma'am. I did not say you are free to leave.

24   Q       Did you reach into his pocket and pull out the  
25           contraband?

1 A At one point, yes, I did.

2 Q When the alleged informant told you that there  
3 was a cook going on, how did you know what that  
4 meant?

5 A How did I know what that meant? I've worked meth  
6 labs before and I've had some specific training  
7 on clandestine methamphetamine laboratories.

8 Q Did the informant know that you knew what that  
9 meant?

10 A I've never talked to him before or since. I  
11 don't know what he knew.

12 Q How did -- did he give you any other information  
13 which led you to believe that there was criminal  
14 activity going on besides what you've testified  
15 to, or she?

16 A Stated that there was firearms in the house,  
17 booby-traps, surveillance equipment, police and  
18 sheriff's department scanners. Made statements  
19 to that effect.

20 Q Did the individual state he had recently been in  
21 the trailer?

22 A Yes, sir. Yes, ma'am.

23 Q Okay.

24 MS. FARRAR: That's all I have at this time,  
25 Your Honor.

1                   THE COURT: You may step down. Who is the  
2 State's next witness?

3                   MR. LANDREAU: State rests, Your Honor.

4                   THE COURT: All right. Would the Defendant  
5 have anything to present at this time?

6                   MS. FARRAR: Yes, Your Honor. Defense would  
7 call Cindy Hoyle to the stand.

8                   MR. LANDREAU: Your Honor, Agent Whitten has  
9 a case in the other courtroom. May he step down  
10 there?

11                  THE COURT: Yes, he may.

12                  CINDY HOYLE

13                  was sworn and testified as follows:

14                  DIRECT EXAMINATION

15                  BY MS. FARRAR:

16                  Q Please state your name for the record?

17                  A Cindy Hoyle.

18                  Q I'm sorry?

19                  A Cindy Hoyle.

20                  Q How do you spell that last name?

21                  A H-o-y-l-e.

22                  Q And on September 31st of '01, where did -- I'm  
23                    sorry, September 21st of 2001, where did you  
24                    live?

25                  A 24 Rusk Drive.

1 Q And do you recall anything unusual happening that  
2 afternoon?

3 A I was standing outside and I seen one of the guys  
4 pull out one of the guys in the house.

5 Q What guys did you see?

6 A It was -- there was a bald-headed guy. There was  
7 a long-headed guy.

8 Q Did they have on Metro Narcotics Task Force gear?

9 A Yes.

10 Q Did you notice anything prior to that?

11 A They pulled them out of that house, just jerked  
12 them out of the house when they knocked on the  
13 door.

14 Q Who did they jerk out of the house? Do you see  
15 him in the courtroom, the person that was pulled  
16 out of the house?

17 A Huh-uh (negative response).

18 Q Was it a female or male?

19 A It was a male.

20 Q And this was across the street from where you  
21 live?

22 A Diagonally from where I lived.

23 Q Diagonal. So how far away from you -- how far  
24 away from that home were you when you were  
25 watching? Were you on the road?

1 A Yeah. I was watching on -- we was watching on  
2 the road, me and my husband that I was married  
3 to.

4 Q What was the first thing you saw when you went  
5 out there?

6 A That he jerked one of the guys out of there, out  
7 of that house.

8 Q Could you identify who it was that jerked  
9 somebody out of the house? Is it anyone in this  
10 courtroom?

11 A It was a bald-headed guy, a real bald-headed guy.

12 Q And did you watch him go up to the door of the  
13 trailer?

14 A Uh-huh (positive response).

15 MR. LANDREAU: Judge, now I'm going to  
16 object to her leading her own witness.

17 THE COURT: Sustain the objection.

18 Q What happened after somebody was jerked out of  
19 the house?

20 A Put in the police car. That's the last thing I  
21 seen.

22 Q Did you watch the whole thing?

23 A Huh-uh (negative response).

24 Q How many people were arrested that you personally  
25 saw?

1 A The girl and one guy. That's all I seen.

2 Q And do you recall any of the Metro Narcotics  
3 officers saying anything to you?

4 A Huh-uh (negative response).

5 MS. FARRAR: I believe that's all I have.

6 Mr. Landreau may have a question or two for you.

7 CROSS-EXAMINATION

8 BY MR. LANDREAU:

9 Q Your trailer, is it on the right or left as you  
10 go down Rusk Drive?

11 A It's the opposite side from where they got  
12 busted.

13 Q Well, is that on the right or is that on the  
14 left?

15 A It was on the left.

16 Q So if I'm going east on 80 and turn in, your  
17 trailer is on the left?

18 A Uh-huh (positive response).

19 Q How many trailers down?

20 A Oh, I don't know.

21 Q Best judgment?

22 A Huh?

23 Q What's your best judgment?

24 A I don't count the trailers.

25 Q Well, how long had you lived there at that time?

1 A I lived there probably six months because I just  
2 moved to town.

3 Q Well, how many trailers are between your trailer  
4 and Mr. Whitley's trailer?

5 A Between? There's no --

6 Q Ma'am?

7 A We was on the opposite side from where he lived.

8 Q Well, actually, if your trailer is on the left,  
9 so is his trailer. So you're on the same side?

10 A We was on opposite sides, I'm sorry.

11 Q Well, how many trailers are between you on  
12 opposite sides?

13 A Probably -- you could see his house.

14 Q That's not what I'm asking. I'm asking you how  
15 many more trailers do you have to go up to get to  
16 his trailer?

17 EXAMINATION

18 BY THE COURT:

19 Q Let me ask you, do you remember what your address  
20 was?

21 A 24 Rusk Drive.

22 Q Did you have a specific lot number?

23 A 24.

24 Q 24. Do you know what his lot number was?

25 A Not really, because all of them was changed by

1           911 when I first moved there.

2   Q   Well, after it was changed, what was your lot  
3       number?

4   A   I don't know.

5   Q   And how long has it been since you've lived  
6       there?

7   A   Six months.

8   Q   Was it changed after you moved or while you still  
9       lived there?

10   A   While I was living there.

11   Q   And it was 24 before it was changed, is that  
12      correct, or after?

13   A   They all had different -- I don't really know.

14   Q   Well, were they numbered one, two, three, four  
15       and five on to 24, or were even numbers on one  
16       side of the street and odd numbers on the other  
17       side of the street?

18   A   It was 24 when I first moved there.

19   Q   In other words, you don't know whether they were  
20       numbered sequentially or not; is that correct?

21   A   Right, because they all had different numbers on  
22       them.

23                   THE COURT: Okay.

24   Q   (By Mr. Landreau:) Now, ma'am, you saw a Metro  
25       Narcotics agent or someone grab a man?

1 Q So how did she know your phone number?

2 A Probably the lady that lives next door, used to  
3 live next door to her, Carolyn.

4 Q So somebody else talked to you about testifying  
5 and then gave your number to Ms. Farrar?

6 A Uh-huh (positive response).

7 Q Who was it that talked to you about testifying?

8 A Nobody talked to me. She asked me about  
9 testifying.

10 Q Huh?

11 A She asked me about testifying.

12 Q And that was the first time?

13 A That's the first time.

14 Q When was that?

15 A I don't remember.

16 Q Well, was it a year ago?

17 A Oh, it's been a year ago.

18 Q Been at least a year?

19 A (Witness nods head affirmatively.)

20 MR. LANDREAU: No further questions.

21 THE COURT: May this witness be excused?

22 MS. FARRAR: No. I have a question, Your  
23 Honor.

24

25

1                   REDIRECT EXAMINATION

2                   BY MS. FARRAR:

3       Q       Ms. Hoyle, I don't believe I talked to you -- I  
4                   won't lead. I'll withdraw that. When was the  
5                   first time you remember hearing from me by phone?

6       A       When you sent me the subpoena to court from  
7                   Carolyn. Subpoena that you gave her you told her  
8                   to give to me.

9       Q       So I never called you before I sent the subpoena,  
10                  did I?

11      A       Yeah. You talked to me and Carolyn.

12      Q       Okay. Did I tell you -- do you remember what I  
13                  told you?

14      A       You asked me would I come and testify.

15      Q       Did I ask you to testify to anything in  
16                  particular?

17      A       No.

18      Q       Did I tell you what to say?

19      A       No, you didn't tell me what to say.

20      Q       Did I ask you what you'd probably say?

21      A       No. You asked me what did I see.

22      Q       Did you tell me what you saw?

23      A       Yes.

24      Q       Is there anything else that you remember from the  
25                  conversation?

1 A I told you I didn't really want to be here.

2 Q And when was that conversation that you told me  
3 that you really didn't want to be here?

4 A The other day when you called.

5 Q Did you -- there was some confusion, I believe,  
6 earlier when I questioned you. Do you know the  
7 person sitting next to me?

8 A Yes.

9 Q Was he the one in the doorway?

10 MR. LANDREAU: Judge, I object.

11 A It's been awhile. I really can't --

12 MR. LANDREAU: The witness has already  
13 testified she didn't recognize anybody in this  
14 courtroom.

15 THE COURT: All right. I'll sustain the  
16 objection.

17 MS. FARRAR: I appreciate you being here,  
18 Ms. Hoyle. That's all.

19 RECROSS-EXAMINATION

20 BY MR. LANDREAU:

21 Q Ms. Hoyle, are you on any kind of medication  
22 today?

23 A No.

24 MR. LANDREAU: No further.

25 THE COURT: Who is the Defendant's next

1 witness?

2 MR. LANDREAU: You may step down.

3 MS. FARRAR: Steven Moseson.

4 (Brief pause.)

5 THE COURT: Let's go ahead and take a  
6 five-minute break. Ms. White was not subpoenaed.

7 MS. FARRAR: She did not get served?

8 THE COURT: She was not served.

9 MS. FARRAR: Okay. Thank you.

10 (Recess.)

11 STEVE MOSESON

12 was sworn and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. FARRAR:

15 Q Please state your name?

16 A Steve Moseson.

17 Q And do you remember a day on September 21st,  
18 2001, when you were approached by Metro Narcotics  
19 agents?

20 A Yes, I do.

21 Q What was the first thing that you remember  
22 happening?

23 A I walked out the door and seen them pull up.  
24 That was the first thing that happened.

25 Q Do you remember walking to your vehicle?

1 A I was walking down the steps coming out of the  
2 door. I was going to get in the truck.

3 Q How far away was your truck from the trailer, if  
4 you recall?

5 A About from me to you.

6 Q And, for the record, how many feet would you say  
7 that is?

8 A 15.

9 Q And did you make it to the truck?

10 A No.

11 Q How far away from the truck were you when  
12 something else happened?

13 A About halfway.

14 Q And what happened then?

15 A Mr. Whitten and there was another fella that was  
16 driving, I believe, he's not in here now, but he  
17 had a gun on me and got out of the car and told  
18 me to get on my knees, and Mr. Whitten searched  
19 me.

20 Q What did they find?

21 A I had \$25.00 worth of meth in my pocket. I was  
22 trying to get my keys out of my pocket, and he  
23 grabbed my hand and said what have you got there,  
24 and I pulled my hand out and it come out.

25 Q Did you say anything?

1 A No.

2 Q Then what happened, if you remember?

3 A They handcuffed me.

4 Q Did they put you into any kind of car at that  
5 point?

6 A No. They set me to the side.

7 Q Where were you sitting in relation to the  
8 trailer?

9 A Right there between him and my truck.

10 Q So it was maybe eight feet from the trailer; is  
11 that halfway?

12 A Probably.

13 Q Did you have a full view of the front door?

14 A Yes.

15 Q What happened next that you saw?

16 A They went to the door, knocked on the door, and  
17 Caylene opened the door.

18 Q They being who?

19 A Officer Whitten and the other one.

20 Q Can you describe the other one?

21 A Bald-headed.

22 Q And after Caylene answered, what happened?

23 A They pulled her out of the front door.

24 Q And then where did they put her?

25 A Off to the side.

1 Q Did they go back to the front door at that point?

2 A Yes.

3 Q And were their guns drawn?

4 A Yes.

5 Q Did they say anything?

6 A Metro Narcotics. I remember them saying Metro  
7 Narcotics.

8 Q Was the door shut at that point?

9 A Yes.

10 Q What kind of door was it, if you remember?

11 A It's a trailer door.

12 Q Was it the kind you can see through?

13 A No.

14 Q And then what happened?

15 A The door opened.

16 Q Could you see who was on the other side?

17 A I didn't see them till they pulled him out.

18 Q Who pulled who out?

19 A I can't remember exactly who pulled who out. I  
20 know Jerry came out of the door. There were two  
21 officers at the door.

22 Q The same two you described before?

23 A Right.

24 Q What else happened?

25 A After they pulled him out, they went inside and

1           got Wayne out.

2   Q       Did you hear any talk?

3   A       I heard -- I couldn't make out the words, but I  
4           heard hollering and yelling, but there was a  
5           bunch of voices, you know, a conglomeration of  
6           voices. I mean, there was a big disturbance  
7           there. There was a lot going on at that moment.  
8           I was on my hands and knees in the front yard  
9           handcuffed.

10           MS. FARRAR: That's all I have. Mr.  
11           Landreau may have a question or two.

12           MR. LANDREAU: No questions for this  
13           witness.

14           THE COURT: Who is the Defendant's next  
15           witness?

16           MR. LANDREAU: You may step down, Mr.  
17           Moseson.

18           MS. FARRAR: Your Honor, Wayne Meadows.

19           (Brief pause.)

20           WAYNE MEADOWS

21           was sworn and testified as follows:

22           DIRECT EXAMINATION

23           BY MS. FARRAR:

24   Q       Please state your name?

25   A       Wayne Meadows.

1 Q On September 21st of 2001, do you recall when  
2 Metro Narcotics Task Force came to where you  
3 were?

4 A Yes, ma'am.

5 Q Or do you recall that day?

6 A Yes, ma'am.

7 Q And where were you that day?

8 A At the residence of Mr. Whitley.

9 Q The person next to me; correct?

10 A Yes, ma'am.

11 Q And do you recall any kind of disturbance while  
12 you were over there?

13 A Yes, ma'am.

14 Q What was the first thing you remember?

15 A I was sitting in the living room with Caylene  
16 White and there was a knock on the door, and she  
17 went to the door and asked who was there and they  
18 said police, and I don't know if the door was  
19 pushed open or if she opened the door. I don't  
20 know.

21 Q Did you get a chance to look through the door?

22 A No, I didn't.

23 Q So after the door was opened, did you see what  
24 happened next?

25 A No. I walked kind of down the first part of the

1                   hallway, and Mr. Whitley was in the back part of  
2                   the house, and I told him that the police were  
3                   outside.

4       Q           And then what happened?

5       A           Then he came by me in the doorway going to the  
6                   door to see what they wanted, and I just heard  
7                   some banging, you know, like the storm door  
8                   banging back and forth and a bunch of commotion  
9                   right there at the door. I was looking out the  
10                  back door. I was going to run out the book door  
11                  of the house, but there was an agent in the  
12                  backyard, so I just turned around and came back  
13                  to the living room and sat back down.

14      Q           Did you look at the front door at all after that?

15      A           When I returned to the living room, the front  
16                  door was just partially open.

17      Q           Did you get to see out that front door at that  
18                  point?

19      A           No, ma'am.

20                   MS. FARRAR: That's all the questions I  
21                  have. Mr. Landreau may have some for you. Thank  
22                  you.

23                   CROSS-EXAMINATION

24      BY MR. LANDREAU:

25      Q           Mr. Meadows, was Jerry Whitley operating a

1 methamphetamine lab in there?

2 MS. FARRAR: Objection, Your Honor.

3 Relevance.

4 THE COURT: Well, this is a motion to  
5 suppress hearing at this point, and I'll sustain  
6 the objection.

7 Q Did you notice some fishing line in that trailer?

8 A No, sir, not really, no.

9 Q Mr. Meadows, wasn't there some line that ran from  
10 the front door to a candle or some type of flame  
11 in the back?

12 A Not that I'm aware of.

13 Q Do you recall Jerry Whitley telling you to blow  
14 the trailer up?

15 A No, sir. I don't recall him telling me to blow  
16 the trailer up, no, sir.

17 Q Do you remember the plea agreement you entered  
18 into?

19 A Yes, sir.

20 Q You remember testifying in front of the Court?

21 A I heard -- I heard someone on the outside of the  
22 house say light it. That's what I heard. I  
23 didn't hear anybody say anything about blow  
24 anything up.

25 Q Well, you recognize the voice that said light it?

1 A Yes, sir. I believe it was Mr. Whitley.

2 Q The man you've known for a long time, hadn't you?

3 A Approximately a year.

4 Q And shortly after you heard that voice say light  
5 it, the officers came in and got you and got you  
6 out of the trailer; is that right?

7 A It was probably two minutes after that.

8 Q Where were you standing when they came in and got  
9 you?

10 A I was sitting on a bar stool there. There was  
11 like a little counter between the kitchen and the  
12 living room, and I was sitting on a bar stool  
13 right there by that counter.

14 Q Mr. Meadows, on that same counter where you were  
15 sitting, were there not a great many coffee  
16 filters and Ephedrine bottles and residue of the  
17 Ephedrine?

18 MS. FARRAR: Objection.

19 THE COURT: I'm going to overrule the  
20 objection.

21 Q You may answer the question, Mr. Meadows.

22 A I really don't recall.

23 Q Well, do you recall the large canisters that were  
24 in the kitchen about three or four feet from you?

25 A Yes, sir. That was like jars.

1 Q Do you recall glass jars with a white mixture in  
2 them?

3 A Yes, sir. I saw the jars on the kitchen floor.

4 Q All of those were clearly visible from where you  
5 were sitting; correct?

6 A Yes, sir.

7 Q And the officer that came in to secure you, it  
8 would have been in his plain view, wouldn't it?

9 A Well, he would had to have step around that  
10 counter I was sitting at.

11 Q Okay.

12 A They was on the kitchen floor.

13 Q Now, would the officers have had any way of  
14 knowing that you were the only other person in  
15 the trailer?

16 A No, no.

17 MS. FARRAR: Objection.

18 A I wouldn't think so.

19 Q Let me ask you this.

20 THE COURT: I'll sustain the objection.

21 Q Did you tell them there was nobody else in the  
22 trailer?

23 A They asked if there was anybody else in the  
24 trailer. I told them no.

25 Q Did you hear anybody else say that?

1 A No, sir.

2 Q This trailer, did it belong to Mr. Whitley?

3 MS. FARRAR: Objection.

4 A I'm not sure who it belonged to.

5 Q Well, who was living there?

6 A Mr. Whitley.

7 MS. FARRAR: Objection.

8 Q Let me ask you something.

9 THE COURT: Objection is overruled.

10 Q How long have you known Mr. Whitley?

11 A Oh, approximately -- before this incident,  
12 probably about six or eight months.

13 Q Do you recall seeing Mr. Moseson there earlier?

14 A Yes, sir.

15 Q Did Mr. Moseson buy some methamphetamine from  
16 Jerry Whitley?

17 A I'm not sure.

18 Q Did you see a transaction between them?

19 A No, sir, I didn't.

20 Q Okay.

21 MR. LANDREAU: No further questions for this  
22 witness.

23 THE COURT: Any further questions, Ms.  
24 Farrar?

25 MS. FARRAR: No, Your Honor.

## EXAMINATION

BY THE COURT:

3 Q Mr. Meadows, there's been some testimony in this  
4 courtroom prior to your testimony today that  
5 there was a strong smell of ether or other  
6 substance on or about your person as if something  
7 had been spilled on you. Had you had something,  
8 either ether or something else, spilled on you  
9 immediately before the police raid on that  
10 trailer?

11 A No, sir. Nothing was spilled on me.

12 Q Did you smell ether in the trailer or something  
13 similar to ether?

14 || A Yes, sir.

THE COURT: Thank you.

16 MS. FARRAR: Your Honor, I would have  
17 recross, I mean, redirect.

18 || THE COURT: Okay.

19 (Brief pause.)

MS. FARRAR: I'll withdraw, I'm sorry.

21 THE COURT: All right. Who is your next  
22 witness?

23 MS. FARRAR: That's all, Your Honor.

24 THE COURT: All right. Anything further on  
25 behalf of the State?

1                   MR. LANDREAU: No, sir, unless the Court.  
2                   wishes some type of closing argument.

3                   THE COURT: You may do so if you want to,  
4                   but I'm not going to require it.

5                   MR. LANDREAU: Judge, I'll keep it very  
6                   brief. This is a classic case of exigent  
7                   circumstances. The officers received information  
8                   that was insufficient for a search warrant. They  
9                   went there to set up surveillance. They  
10                  encountered an individual who smelled strongly of  
11                  the precursor chemicals to methamphetamine. They  
12                  went to the door in an attempt to verify who  
13                  lived there, and at that point they were  
14                  confronted by people screaming to light it or  
15                  blow it up, and they entered the trailer to  
16                  protect themselves and the citizens from the  
17                  threat of an explosion. Also, obviously, it  
18                  would serve the dual purpose to preserve  
19                  evidence. They went in there and secured Mr.  
20                  Meadows, brought him out, and then immediately  
21                  got a search warrant.

22                  We think it's a classical case of probable  
23                  cause that coexists with exigent circumstances.

24                  THE COURT: Ms. Farrar, do you have anything  
25                  you'd like to add?

1 MS. FARRAR: Just really briefly, Your  
2 Honor. Police officers cannot create their own  
3 exigent circumstances. Rather than in  
4 encountering an individual, they went up to him  
5 and actually arrested him illegally and guns were  
6 drawn, and they actually did raid the residence  
7 of my client. It was an illegal arrest, and  
8 anything that stems from it would be poisonous  
9 fruits.

10 Also, even though perhaps it could be argued  
11 that my client, Mr. Whitley, does not have  
12 standing to use the Moseson arrest, it actually  
13 is what was used to create the exigent  
14 circumstances, so I believe this would be  
15 allowable. That's all I have, Your Honor.

16 THE COURT: All right. The Court would deny  
17 the motion to suppress. Thank you.

18 MS. FARRAR: Your Honor, I would like to ask  
19 during the trial if I might be able to have a  
20 continuing objection to the admission of any of  
21 the arrests itself, the search warrant, any  
22 statements or seized contraband as a result of  
23 what we would like to preserve our objection as  
24 an illegal arrest.

25 THE COURT: Yeah. I'll let you have a

1 continuing objection.

2 MS. FARRAR: Thank you, Your Honor.

3 (End of proceedings.)

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STATE OF ALABAMA  
IN THE CIRCUIT COURT FOR THE COUNTY OF RUSSELL  
TWENTY-SIXTH JUDICIAL CIRCUIT  
CRIMINAL

STATE OF ALABAMA

v.

Case Nos. CC 02-186, 187 188

JERRY E. WHITLEY,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT

Before:

Honorable George R. Greene and Jury  
Phenix City, Alabama - December 5, 2002

APPEARANCES:

For the State:

Buster Landreau, Esq.  
Chief Deputy District Attorney

For the Defendant:

Laural Farrar, Esq.  
Phenix City, Alabama

Linda S. Wilson  
Official Court Reporter

1 (Jury venire present.)

2 THE COURT: Which case would the State call  
3 for trial at this time?

4 MR. LANDREAU: Your Honor, the State would  
5 call State of Alabama versus Jerry Whitley, Case  
6 Number 2002-186 on a charge of trafficking in  
7 methamphetamine, Case Number 2002-187 on a charge  
8 of possession of methamphetamine, and 2002-188 on  
9 a charge of resisting arrest.

10 THE COURT: State ready to proceed?

11 MR. LANDREAU: State is ready, Your Honor.

12 THE COURT: Defendant ready to proceed?

13 (Bench conference, off record.)

14 (Brief pause.)

15 THE COURT: All right, ladies and gentlemen  
16 of the jury. The State has called for trial the  
17 cases styled the State of Alabama versus Jerry  
18 Whitley.

19 Is the Defendant ready to proceed at this  
20 time?

21 MS. FARRAR: Ready, Your Honor.

22 (Jury venire sworn.)

23 THE COURT: Ladies and gentlemen, the State  
24 has called for trial the cases that are styled  
25 the State of Alabama versus Jerry Whitley.

1                   In Case Number CC 2002-186, this case comes  
2 to the Court by way of an indictment returned by  
3 a grand jury impaneled here in Russell County.  
4 The indictment is not evidence in the case and  
5 may not be considered by you as evidence in the  
6 case. This particular indictment charges the  
7 Defendant, Jerry E. Whitley, with the offense of  
8 trafficking in methamphetamine and alleges that  
9 he did, on or about the 21st day of September,  
10 2001, knowingly sell, deliver or bring into the  
11 State of Alabama or was knowingly in actual or  
12 constructive possession of 28 grams or more of  
13 methamphetamine or any mixture containing  
14 methamphetamine, in violation of Section  
15 13A-12-231 of the Code of Alabama of 1975, as  
16 amended. To this charge, the Defendant has  
17 entered a plea of not guilty.

18                   In Case Number CC 2002-187, the Defendant,  
19 Jerry E. Whitley, is charged with the offense of  
20 unlawful possession of a controlled substance.  
21 The indictment in this case alleges that the  
22 Defendant did unlawfully possess methamphetamine,  
23 a controlled substance, contrary to and in  
24 violation of Section 13A-12-212 of the Code of  
25 Alabama of 1975, as amended, and against the

1 peace and dignity of the State of Alabama. To  
2 that charge, the Defendant has entered a plea of  
3 not guilty.

4 And the third charge in Case Number  
5 CC 2002-188 also comes to the Court by way of an  
6 indictment returned by a grand jury impaneled  
7 here in Russell County, and the Defendant is  
8 charged with the offense of resisting arrest and  
9 alleges that on or about the 21st of September,  
10 2001, the Defendant did intentionally prevent or  
11 attempt to prevent Agents Whitten, Price, Memmo  
12 and Spear from effecting a lawful arrest of  
13 himself, in violation of Section 13A-10-41 of the  
14 Code of Alabama. To this charge, the Defendant  
15 has entered a plea of not guilty.

16 The Defendant is presumed to be innocent  
17 until proven guilty in all three of these  
18 charges.

19 (Voir dire of jury venire.)

20 (Jury not present.)

21 THE COURT: Do we have any challenges?

22 MR. LANDREAU: Judge, I have to confess I'm  
23 not sure that this is grounds for a challenge for  
24 cause, but Ms. Jessie Smith indicated she is  
25 allergic to ammonia. I've been told by my lab

1           person that some of this evidence does smell of  
2           ammonia, and I'm worried about if they take it  
3           into a jury room, which is a fairly small  
4           confined space, and I'd move to challenge her for  
5           that reason. I think there may be a problem with  
6           her being able to view this evidence.

7           THE COURT: Health hazard to a juror I don't  
8           know is listed as one of the challenges for  
9           cause.

10          MR. LANDREAU: I don't know if it is either,  
11           Judge.

12          THE COURT: I would decline to strike her as  
13           a challenge for cause. Ms. Farrar, do you have  
14           anything?

15          MS. FARRAR: Yes. I would move to strike  
16           Gordon Eugene Cox. He stated that he has not yet  
17           received an order back on the modification or a  
18           final order where the members of my firm  
19           represent his ex-wife, so there's still a pending  
20           representation.

21          THE COURT: Well, he's indicated that that  
22           would not affect his or influence him in his  
23           decision, and I will decline to strike him on a  
24           challenge for cause. Anything further?

25          MR. LANDREAU: No, Your Honor.

1                   THE COURT: All right. There are some  
2 motions, Ms. Farrar, you have at this time?

3                   MS. FARRAR: Yes, Your Honor. I believe  
4 there's an outstanding motion to continue based  
5 on --

6                   THE COURT: Well, I denied that yesterday  
7 afternoon. And you were called and informed that  
8 I had denied the motion to continue?

9                   MS. FARRAR: That's right.

10                  THE COURT: I didn't see it until yesterday  
11 afternoon. When was it filed?

12                  MR. LANDREAU: I believe Tuesday, Your  
13 Honor.

14                  MS. FARRAR: Your Honor, I received the  
15 laboratory report, with apologies, the day before  
16 Thanksgiving. And also was still waiting, and I  
17 understand the circumstances completely, but Ms.  
18 Wilson had not had an opportunity to prepare the  
19 requested transcripts I ordered.

20                  THE COURT: I think she prepared those and  
21 delivered them to you yesterday.

22                  MS. FARRAR: I received them, Your Honor, in  
23 the afternoon. But concerning the expert  
24 witness, the independent laboratory analysis, I  
25 would still move to be able to get that analysis

1           into evidence, and I realize I can't do that  
2           without my expert here. He's not here. But if I  
3           were allowed the continuance and the  
4           extraordinary expenses, and that's the other  
5           motion, motion for extraordinary expenses, which  
6           I understood you denied yesterday, I would like  
7           to put on my offer of proof about what I would  
8           expect to prove to preserve that for appeal, Your  
9           Honor.

10           THE COURT: Well, had you made any  
11           arrangements to bring him here for this week?

12           MS. FARRAR: No, Your Honor.

13           THE COURT: And you understood the case was  
14           set for trial this week; did you not? Is there  
15           any particular reason why you made no  
16           arrangements to have him here for this week?

17           MS. FARRAR: I was waiting for the results  
18           of the laboratory analysis.

19           THE COURT: Well, you had informed the Court  
20           that they would be ready for this week, did you  
21           not, at the last motion that you made and at the  
22           last term of court in which you -- which was  
23           September?

24           MS. FARRAR: Yes, Your Honor. And I did  
25           file a motion for his --

1                   THE COURT: Which was a two full months  
2 ago.

3                   MS. FARRAR: I filed the motion for his  
4 expenses to fly out here, and I was told -- I  
5 believe that the Court said let's wait on what  
6 the results are and then I will decide whether to  
7 grant the extraordinary expenses for him to  
8 travel out here, and then I did the motion for  
9 extraordinary expenses as soon as I got the  
10 results.

11                  THE COURT: Which shows that there was  
12 methamphetamine present?

13                  MS. FARRAR: Yes, Your Honor. It was -- my  
14 offer of proof would be that --

15                  THE COURT: And you would want to fly the  
16 witness here to show that there was  
17 methamphetamine present?

18                  MS. FARRAR: To show that it was in such  
19 small a quantity related to the liquid substance,  
20 that that would be preserved for the record.

21                  THE COURT: Well, do you have a written  
22 report from this individual?

23                  MS. FARRAR: Yes, Your Honor.

24                  THE COURT: Will the State stipulate to that  
25 report?

1                   MR. LANDREAU: Your Honor, we have no  
2 problem with her introducing the report in terms  
3 of an appellate record. Our position is under  
4 Alabama law, the ratio of meth to other  
5 substances in the mixture is immaterial and  
6 irrelevant, so we would object to it going to the  
7 jury. But if she wants to place it there for  
8 some purposes of an issue down the road, we don't  
9 have any objection to that. We just don't think  
10 it should go to the jury.

11                  THE COURT: Well, there's been a Motion in  
12 Limine that has been filed --

13                  MR. LANDREAU: Yes, sir.

14                  THE COURT: -- in this matter in which the  
15 State is asking that the argument not be made as  
16 being impermissible. Do you have any response to  
17 that, Ms. Farrar?

18                  MS. FARRAR: Your Honor, I would object to  
19 the Motion in Limine. The jury has a right to  
20 know the total circumstances surrounding this  
21 alleged methamphetamine lab drug bust, and my  
22 client has received information that was prepared  
23 by the expert witness, and I believe that it  
24 would be in the interest of justice that this  
25 information and report be preserved for the

1 record and placed in the file. If it's the  
2 Court's ruling that the jury doesn't see it,  
3 that's one thing, but I would want it in the file  
4 to be preserved.

5 THE COURT: Let me say that I think it would  
6 be permissible for the defense to show the  
7 percentage of methamphetamine in any  
8 controlled -- in any volume of material other  
9 than what is there.

10 MS. FARRAR: I don't understand.

11 THE COURT: Well, what I'm saying is your  
12 client is being charged with possession of 28  
13 grams or more of methamphetamine; is that  
14 correct?

15 MR. LANDREAU: Yes, Your Honor.

16 THE COURT: And if you have something to  
17 show there is not 28 grams in there, in this case  
18 you have a mixture that has methamphetamine in  
19 it, according to your report. Does it state the  
20 actual amount of methamphetamine in that  
21 mixture?

22 MS. FARRAR: Yes, Your Honor.

23 MR. LANDREAU: Your Honor, in response,  
24 State's position is, under case law, if it's in a  
25 mixture such as this, it is the total weight of

1           the mixture, not the weight of the active  
2           ingredient within the mixture.

3           MS. FARRAR: And I have two arguments about  
4           that. The case law is certainly that a mixture  
5           is defined as containing the drug and containing  
6           other substances, but there has been case law  
7           about what other substances can be defined as  
8           being part of the mixture and what are excluded.

9           THE COURT: Do you have that for me to look  
10          at?

11          MS. FARRAR: Yes, Your Honor.

12          MR. LANDREAU: Ms. Farrar, are you referring  
13          to the Fletcher case?

14          MS. FARRAR: Yes.

15          MR. LANDREAU: Your Honor, we submit that's  
16          not applicable. That case says if you have two  
17          substances that are together that do not combine  
18          into one mixture, in the Fletcher case it was  
19          crack cocaine and soap chips, that's not a  
20          mixture. But Fletcher also holds that if the  
21          methamphetamine or drugs are comingled and  
22          diffused among a liquid or other substance, then  
23          you do count the entire weight of the mixture.

24          MS. FARRAR: Our position would be that it's  
25          possible in our case that it's slightly different

1 than that. It's not soap certainly, but that  
2 there could be new law by the Alabama Court of  
3 Criminal Appeals up to the Supreme Court. There  
4 is a Federal law where mixtures are analyzed to  
5 determine the amount of alleged controlled  
6 substance.

7 THE COURT: Do you have the Fletcher case  
8 that you have cited?

9 MS. FARRAR: Yes, sir.

10 MR. LANDREAU: Here it is, Judge.

11 (Brief pause.)

12 THE COURT: All right. Do you have  
13 something further, Ms. Farrar?

14 MS. FARRAR: I do not have the case with me  
15 or the case name, but in my research I found a  
16 case where the Defendant had appealed or had a  
17 Rule 32 for ineffective assistance of counsel.  
18 One of the allegations was that the defense  
19 attorney asked the question of the forensic  
20 scientist did you check the ratio of the alleged  
21 controlled substance to the other ingredients of  
22 the mixture which was weighed. The scientist  
23 said in the presence of the jury, no, because I  
24 didn't have to. The Defendant was arguing that  
25 that was a showing that the attorney was not

1 learned in the law, but the Justices said, no,  
2 that was not an example of ineffective assistance  
3 of counsel. That was something that was  
4 appropriate, so I would just offer that.

5 THE COURT: May I see the report that you  
6 have from your --

7 MS. FARRAR: Yes, Your Honor.

8 THE COURT: -- testing?

9 MS. FARRAR: I believe Mr. Landreau has a  
10 copy, and I've marked it as Defendant's Exhibit  
11 1. It has five pages.

12 THE COURT: Now, this is his result just of  
13 the sample?

14 MS. FARRAR: Of the samples. They each  
15 contained five milliliters. There were two  
16 samples. One was found to have approximately  
17 point three milligrams per milliliter, and the  
18 other sample was found to have 1.8 milligrams per  
19 millileter. Attached to the report is the CV of  
20 the independent expert, Dr. John Hiatt.

21 THE COURT: I don't see any problem with  
22 this report being entered into evidence and being  
23 presented to the jury. There's been a Motion in  
24 Limine that has been filed, and the Court would  
25 grant the State's Motion in Limine to the extent

1           that it would be impermissible for you to argue  
2           to the jury that a mixture containing  
3           methamphetamine is not sufficient for conviction.

4           MR. LANDREAU: Judge, just for  
5           clarification, as I understand it, the Court is  
6           telling defense counsel they cannot argue that  
7           there was really less than 28 grams of meth  
8           regardless of the weight of the mixture; is that  
9           correct?

10          THE COURT: No. What I'm telling you is she  
11          cannot bring up that there is -- that a jury  
12          cannot convict upon the fact that there is less  
13          than the actual 28 grams of methamphetamine; that  
14          it is clearly the law that it is a mixture  
15          containing methamphetamine of 28 grams or more.  
16          And the Court is going to instruct the jury as to  
17          what the definition of the mixture as cited by  
18          the Court in the Fletcher opinion.

19          MR. LANDREAU: Judge, do you want to keep  
20          the Fletcher --

21          THE COURT: I wrote down the definition.

22          MR. LANDREAU: Oh, okay. I was just going  
23          to let you keep the case because I didn't think I  
24          would be needing it again.

25          MS. FARRAR: But, Your Honor, I would be

1 allowed to argue to the jury simply the fact that  
2 there was found to be this much proportion?

3 THE COURT: Yeah. I think you are entitled  
4 to ask of the State's witness what the proportion  
5 of methamphetamine is to that as well as present  
6 the proportion from your expert analysis.

7 MS. FARRAR: Your Honor, I don't have my  
8 expert to get this evidence in. I don't know how  
9 I can get it in without laying the foundation  
10 of --

11 THE COURT: Well, I don't see any problem  
12 with there being a stipulation that that be  
13 entered into evidence.

14 MR. LANDREAU: No problem with that.

15 THE COURT: And it has his background as  
16 well as --

17 MS. FARRAR: Thank you, Your Honor.

18 THE COURT: -- education and training and  
19 experience to show that he is an expert.

20 MS. FARRAR: Yes, sir. And we need to get  
21 that on the record before the jury, or is it  
22 sufficient to have it on the record now?

23 THE COURT: Well, I mean, you'll be able to  
24 read that out to the jury as part of your  
25 exhibit.

1 MS. FARRAR: Yes, sir.

2 THE COURT: All right. You have 30 minutes  
3 to strike a jury.

4 (Counsel and the circuit court clerk  
5 struck the jury without the presence  
6 of the court reporter.)

7 (Jury impaneled.)

8 (Rest of jury venire dismissed.)

9 (Jury sworn.)

10 THE COURT: Ladies and gentlemen of the  
11 jury, there are three cases that are before you  
12 for trial today, and the Court has read out the  
13 indictments that bring these cases to the Court  
14 for trial, and I'm not going to reread the  
15 indictments, but I want to remind you that the  
16 indictments are not evidence in the case. They  
17 are merely the written means by which the cases  
18 are brought before the Court for trial. The  
19 indictments also serve the purpose of notifying a  
20 defendant with particularity of the offenses with  
21 which he is charged, and it sets out the elements  
22 of the offense which must be proved by the State  
23 of Alabama.

24 Before proceeding with the trial of the  
25 case, it may be helpful to you and to the Court

1           that you understand the rules of procedure that  
2       will be followed by you and by the Court in these  
3       cases. These cases are criminal cases. The  
4       procedure for the trial of these cases, as in  
5       criminal cases of the same character, will be as  
6       follows.

7           Mr. Landreau on behalf of the State will  
8       make an opening statement outlining the State's  
9       case. Ms. Farrar will then make an opening  
10      statement outlining the defense. Each side in  
11      the opening statement will be confined to an  
12      outline of the case and a statement of what they  
13      expect the evidence to show. Their statements  
14      are intended to inform you and the Court about  
15      the cases, so that we will both be familiar with  
16      the theories and contentions of each side from  
17      the beginning.

18           Following these opening statements by the  
19       attorneys, witnesses will first be called by the  
20       State to testify. After the State has presented  
21       witnesses, the Defendant will then be permitted  
22       to call witnesses to testify. All witnesses will  
23       be sworn and will testify under oath. Their  
24       testimony will be evidence. There may be  
25       exhibits offered which, if received by the Court,

1 will also be evidence. It will be upon all of  
2 this evidence, the testimony and the exhibits,  
3 that you may consider in arriving at your final  
4 verdict, and you may consider only the testimony  
5 from the stand and the exhibits that have been  
6 entered into evidence in reaching your final  
7 verdict.

8 Following the close of evidence in the case  
9 or presentation of evidence, the attorneys will  
10 again have the privilege of addressing you, and  
11 this is referred to as summation or closing  
12 argument. The attorneys have the right to  
13 discuss the evidence and all the reasonable  
14 inferences to be drawn therefrom to help you  
15 arrive at a just and true verdict. Mr. Landreau  
16 on behalf of the State will have the right to  
17 open the arguments, followed by Ms. Farrar on  
18 behalf of the Defendant. Mr. Landreau will then  
19 have the right to a second closing argument, and  
20 this is primarily based upon the fact that the  
21 burden of proof is upon the State of Alabama in  
22 all three of these cases to prove the Defendant  
23 guilty as charged. The Defendant is innocent  
24 until proven guilty.

25 Following the arguments of the attorneys, it

1 will be the duty of the Court to state to you the  
2 applicable rules to guide you in arriving at your  
3 verdict. The case will then be submitted or  
4 cases will be submitted to you for your  
5 deliberation. Upon retiring to the jury room to  
6 consider your verdict, you elect one of your  
7 number as foreperson to moderate your discussion  
8 and to sign and return the verdicts chosen by you  
9 to the Court.

10 It is my duty as judge to see that the trial  
11 progresses in an orderly fashion, to rule upon  
12 all legal matters that are presented, to define  
13 the issues involved, and instruct the jury as to  
14 the law applicable in the particular cases. It  
15 is your duty as jurors to follow the law as so  
16 stated to you by the Court. You will, therefore,  
17 render a verdict in accordance with the facts as  
18 you determine them from the evidence and the law  
19 as given to you by the Judge.

20 In determining what the true facts are from  
21 the evidence, you may take into consideration any  
22 natural interest or bias a witness may have as a  
23 result of any connection with the case. You may  
24 take into consideration the interest or bias a  
25 witness may have shown while testifying. And you

1 may take into consideration the demeanor of any  
2 witness, as to whether the witness has apparently  
3 testified frankly or evasively. You may take  
4 into consideration any matter which you would in  
5 your everyday affairs in passing upon the  
6 truthfulness and accuracy of the testimony.  
7 Weigh the testimony in the light of your common  
8 observation and experience and reach a verdict  
9 that will be based upon the truth as you  
10 determine it from all of the evidence.

11 During the course of the trial, I may rule  
12 on objections by the attorneys as to the  
13 admissibility of testimony or other evidence. It  
14 is the duty of an attorney to make such  
15 objections to the offer of evidence which he or  
16 she deems illegal or improper. You must not  
17 concern yourselves with the reasons for my  
18 rulings since they are controlled and required by  
19 rules of law. You are not to speculate as to  
20 possible answers to questions which I do not  
21 require to be answered. The overruling of  
22 objections to evidence is not intended to  
23 indicate the weight to be given that admitted  
24 evidence. The admitted evidence is to be  
25 considered along with all the other evidence.

1 You are to disregard any evidence or offer of  
2 evidence which the Court has excluded.

3 An attorney is an officer of the court. It  
4 is the attorney's duty to present evidence on  
5 behalf of the client, to make such objections as  
6 the attorney deems proper, and to fully argue the  
7 client's case. An attorney's statements and  
8 arguments are intended to help you understand the  
9 evidence and apply the law. However, their  
10 arguments are not evidence, and you should  
11 disregard any remark, statement or argument which  
12 is not supported by the evidence or by the law as  
13 given to you by the Court. Likewise, statements  
14 made by the Court are not evidence and are not to  
15 be considered by you as evidence.

16 No juror should attempt to make an  
17 individual investigation of the facts or of  
18 anyplace testified about. You are not authorized  
19 to gather evidence on your own account or on  
20 behalf of any of the parties to the case. You  
21 should not visit the scene of any alleged  
22 incident or attempt to inspect or examine any  
23 object or property unless that object or property  
24 has been received in evidence and your inspection  
25 is made either in the courtroom or in the jury

1 room.

2 As a juror, you have a legal right to take  
3 notes during the trial, but the Court does not  
4 generally recommend the taking of notes by  
5 jurors. If notes are taken by you, they should  
6 be taken simply as an aid to your memory and for  
7 your assistance in that regard, and they may not  
8 be exhibited to the other jurors as an  
9 authoritative record.

10 During the course of the trial there may be  
11 some words or phrases used that need to be  
12 defined. The Court will give to you a legal  
13 definition of these words or terms. The legal  
14 definition sometimes is different from the  
15 definition that is customarily ascribed to the  
16 word or term. If this should happen, you should  
17 accept the Court's definition. In no event  
18 should you seek any definition of any word or  
19 phrase by consulting any dictionary, encyclopedia  
20 or other book. That would be improper for you to  
21 do so.

22 Until this case is submitted to you for your  
23 deliberations, you must not discuss the case with  
24 anyone, nor permit anyone to discuss the case  
25 with you or in your hearing. You are to keep an